

Attorney Docket No. TRAC-100FWC CON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

RHONDA TRACY

Serial No.: 09/107,643

Filed: June 30, 1998

For: DISPOSABLE DIAPER WITH
PADDED WAISTBAND
AND PADDED LEGHOLES

Examiner: M. Polutta

Art Unit: 3761

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BOX AFTER FINALAssistant Commissioner for Patents
Washington, D.C. 20231SECOND DECLARATION OF RHONDA TRACY

Dear Sir:

Rhonda Tracy declares as follows:

1. This declaration supplements my declaration dated January 28, 1999 which, I am informed, is of record in the above-captioned patent application.
2. I have claimed priority for the presently-rejected claims of my current patent application back to the filing of my design patent application Serial No. 93,681 filed September 8, 1987.
3. As of the September 8, 1987 filing date of my now-abandoned design patent

application Serial No. 93,681, disposable diapers that were common to the marketplace in the United States had an outer plastic layer that was fluid impervious. The innermost layer(s) were fluid permeable, and between the inner layer and the outer layer, the diaper contained a liquid-absorbing layer.

4. The title on my design patent application Serial No. 93,681 was, on information and belief, "An Ornamental Design for a Disposable Diaper." The description of the figures in the design application specified that Fig. 1 "is a perspective view of a disposable diaper showing my new design." I signed that design application on March 2, 1987.

5. I understood that the outermost layer illustrated in my figures 1-3 of my design application Serial No. 93,681 represented a plastic layer of the disposable diaper. Due to the prevalent nature of disposable diapers having the outer layer as plastic in that time era, I believe that the person of ordinary skill in the diaper designing art would understand from my figures and from the title of my design patent application that the outer layer was plastic.

6. It is also clear to me and in my opinion would have been clear to persons of ordinary skill in the diaper-designing art as of September 8, 1987, that the diaper design illustrated there had an outer layer with an edge at the top of the waistband, where the outer layer and the inner layer come together. On information and belief, a person of ordinary skill in the art would have understood from inspecting my design patent application that a plastic layer extends to the top of the waistband.

7. I understand that the Examiner in the present application raises various issues with regard to the word "soft." As used in these claims, the word "soft" pertains to the feel of the resulting product against the skin of the diaper wearer. This agrees, for example, with the first definition of "soft" appearing in a common dictionary: "pleasing or agreeable to the senses: bringing ease, comfort, or quiet <the ~ influences of home>" Websters New Collegiate Dictionary (Merriam Co., 1977) (copy attached). Thus, in the context of baby diapers, I understand the word "soft" as a

basic descriptive word that pertains to the resulting feel of the object against the skin. It is determined by tactile sensation.

8. Fig. 1 of my design patent application 93,681 shows that the item supporting the soft padding member in pending claim 7 is curved around the waistband so as to gird the wearer. This indicates that the substance is not so brittle as to be incapable of curvature. Fig. 2 also shows the member as flat. Moreover, the member as shown in Figs. 1 and 2 wrap around from the inside to the outside of the diaper, thereby further indicating their pliability and providing extra cushioning. In my opinion, the worker of ordinary skill in the art of diaper design in 1987 would have understood this member to be soft rather than hard and brittle and further would have understood it to be non-abrasive. Abrasive materials would be unsuitable for contact with the skin of babies in the waist and crotch area. I do not believe that persons skilled in the art of diaper design would misunderstand the word "soft" in the context of the claimed subject matter.

9. I believe that the ordinarily skilled diaper designer as of 1987 would have understood that the members (numbered as 50, 64, and 66 in my utility patents and the pending application) I added at the waistband and leg hole regions of my diaper design would have been understood to provide a soft surface. Further, I believe they would be understood to provide padding or a cushion effect. For example, elastic provided in a waistband of diapers of that era could be covered by my added strips, in the embodiment shown in the drawings. Such elastic as was being used in disposable diapers in the U.S. in 1986, in my experience, caused the diaper to leave lines or marks on the babies' skin. The threading and elastic would rub against the skin throughout the day with normal wear, and thus were flawed from a comfort perspective. My modifications overcame this, and this added layer between the skin of the baby and part of the diaper cushions against that abrasion.

10. I acknowledge that willful false statements and the like are punishable by fine or imprisonment or both under Title 18 USC 1001 and may jeopardize the validity of the patent application or any patent issuing thereon. The statements in this declaration that are made of my own knowledge are true and statements made herein on information and belief are believed by me to be true.

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Rhonda Tracy 4-18-00

Rhonda Tracy

Dated: April 18, 2000

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WEBSTER'S

New Collegiate Dictionary

A Merriam-Webster®

G. & C. MERRIAM COMPANY
Springfield, Massachusetts, U.S.A.

sodium fluoride • Sogdian

sodium fluoride *n* : a poisonous alkaline salt NaF that is used in trace amounts in the fluoridation of water, in metallurgy, as a flux, as an antiseptic, and as a pesticide
sodium fluoroacetate *n* : a poisonous powdery compound C₂H₃FO₂Na used as a rodent poison
sodium hydroxide *n* : a white brittle solid NaOH that is a strong caustic basic used esp. in making soap, rayon, and paper
sodium hypochlorite *n* : an unstable salt NaOCl produced usu. in aqueous solution and used as a bleaching and disinfecting agent
sodium hyposulfite *n* 1: SODIUM THIOSULFATE 2: a crystalline water-soluble salt Na₂S₂O₄ used esp. in dyeing and bleaching
sodium meta-sulfate *n* \met-ə'sil-ə-kāt, -säl-ə-kāt/ *n* : a toxic corrosive crystalline salt Na₂SiO₃ used esp. as a detergent or as a substitute for phosphates in detergent formulations
sodium nitrate *n* : a deliquescent crystalline salt NaNO₃ found in crude form in Chile and used as a fertilizer and an oxidizing agent and in curing meat
sodium nitrite *n* : a salt NaNO₂ used esp. in dye manufacture and as a meat preservative
sodium pump *n* : the process by which sodium ions are actively transported across a cell membrane; esp. : the process by which the appropriate internal and external concentrations of sodium and potassium ions are maintained in a nerve fiber and which involves the active transport of sodium ions outward with movement of potassium ions to the interior
sodium salicylate *n* : a crystalline salt NaC₇H₅O₂ that has a sweetish saline taste and is used chiefly as an analgesic, antipyretic, and antirheumatic
sodium sulfate *n* : a bitter salt Na₂SO₄ used esp. in detergents, in the manufacture of wood pulp and rayon, in dyeing and finishing textiles, and in its hydrated form as a cathartic — compare OLAUER'S SALT
sodium thiosulfate *n* : a hygroscopic crystalline salt Na₂S₂O₃ used esp. as a photographic fixing agent and a reducing or bleaching agent — called also *hypo*, sodium hyposulfite
sodium tripolyphosphate *n* \tri-pāl-i-'fās-fāt/ *n* : a crystalline salt Na₅P₃O₁₀ that is a major component of many detergents and a major contributor to water pollution
sodium-vapor lamp *n* : an electric lamp that contains sodium vapor and electrodes between which a luminous discharge takes place and that is used esp. for lighting highways
Sod-om \sād-əm/ *n* [Sodom, city of ancient Palestine destroyed by God for its wickedness (Gen 18:20, 21; 19:24-28)] : a place notorious for vice or corruption
sod-om-ite \sād-ə-'mit/ *n* : one who practices sodomy
sod-om-y \sād-ə-'mē/ *n* [ME, fr. OF *sodomie*, fr. LL *Sodomia*; Sodom; fr. the homosexual proclivities of the men of the city (Gen 19:1-11)] 1: copulation with a member of the same sex or with an animal 2: noncoital and esp. anal or oral copulation with a member of the opposite sex
so-ev-er \sō-'ev-ər/ *adv* [-səv-ər (as in *howsoever*)] 1: to any possible or known extent — used after an adjective preceded by *how* or a superlative preceded by *the* <how fair ~ she may be> <the most selfish ~ in this world> 2: of any or every kind that may be specified — used after a noun modified esp. by *any*, *na*, or *what* <he gives no information ~>
SOF *abbr* sound on film
so-fa \sō-'fā/ *n* [Ar *suffah* long bench] : a long upholstered seat usu. with arms and a back and often convertible into a bed
sofa bed *n* : an upholstered sofa that can be made to serve as a bed by lowering its hinged upholstered back to horizontal position
so-far \sō-'fär/ *n* [sound fixing and ranging] : a system for locating an underwater explosion at sea by triangulation based on the reception of the sound by three widely separated shore stations
so far as *conj* : insofar as
sof-flit \sō-'flīt/ *n* [F *soffito*, fr. It *soffitto*, fr. (assumed) VL *sufflensus* pp. of L *suffigere* to fasten underneath — more at SUFFIX] : the underside of a part or member of a building (as of an overhang or staircase); esp. : the intrados of an arch
soft \sɒft/ *adj* [ME, fr. OE *sōfte*, alter. of *sēfte*; akin to OHG *semfti* soft] 1 a: pleasing or agreeable to the senses : bringing ease, comfort, or quiet <the ~ influences of home> b: having a bland or mellow rather than a sharp or acid taste or flavor c (1) : not bright or glaring : SUBBED (2) : having or producing little contrast or a relatively short range of tones <a ~ photographic print> d: quiet in pitch or volume e of the eyes: having a liquid or gentle appearance f: smooth or delicate in texture grain, or fiber <~ cashmere> <~ fur> g (1) : balmy, mild, or clement in weather or temperature (2) : moving or falling with slight force or impact : not violent <~ breezes> 2: demanding little work or effort : EASY-IDLE <a ~ job> 3 a: sounding as in *ace* and *gem* respectively — used of *c* and *g* or their sound b of a consonant : VOICED c: constituting a vowel before which there is a \y/ sound or a \y/-like modification of a consonant or constituting a consonant in whose articulation there is a \y/-like modification or which is followed by a \y/ sound (as in Russian & archaic: moving in a leisurely manner 5: rising gradually <~ slope> 6: having curved or rounded outline : not harsh or jagged <~ hills against the horizon> 7: marked by a gentleness, kindness, or tenderness as a (1) : not being or involving harsh or onerous terms : EASY <a policy of ~ competition> (2) : based on negotiation and conciliation rather than on a show of power or on threats <took a ~ line towards the enemy> b: tending to ingratiate or disarm : ENGAGING, KIND <a ~ answer turns away wrath — Prov 15:1 (RSV)> c: marked by mildness : UNASSILING, LOW-KEYED 8 a: emotionally suggestible or responsive : IMPRESSIONABLE b: unduly susceptible to influence : COMPLIANT c (1) : lacking firmness or strength of character : FEEBLE, UNMILLY (2) : marked by a gradually declining trend : not firm <wood prices are increasingly ~> d: amorously attracted or emotionally involved — used with *on* <has been ~ on her for years> 9 a: lacking robust strength, stamina, or endurance esp. because of living in ease or luxury b: weak or deficient mentally 10 : yielding to physical pressure b: permitting someone or some-

(thing to sink in — use *soft* wet ground c (1): of a consistency that may be shaped or molded (2) of *chess*: capable of being spread d: easily magnetized and demagnetized e: lacking relatively or comparatively in hardness <~ iron> 11: deficient in or from substances (as calcium and magnesium salts) that prevent lathering of soap <~ water> 12: having relatively low energy circumstances as to avoid destructive impact <~ landing of spacecraft on the moon> 14: not protected against enemy attack <a ~ aboveground launching site> 15 of a detergent: BIODEGRADABLE 16 of a drug: considered less detrimental than a hard narcotic (marijuana is usually regarded as a ~ drug) 17 easily polarized — used of acids and bases — *soft-ish* \sɒf-tish/ *softly* \sɒf-tli/ *adv* — *softness* \sɒf(t)-nəs/ *n* *syn* SOFT. BLAND. MILD. GENTLE. LIENANT *shared meaning element*: devoid of harshness, roughness, or intensity *ant* hard, stern *soft* *adv*: in a soft or gentle manner: *SOFTLY* *soft-back* \sɒf(t)-bæk/ *adj*: *SOFT-COVER* — *softback* *n* *soft-ball* \sɒf-bɔ:l/ *n*: baseball played on a small diamond with a ball that is larger than a baseball and that is pitched underhand; also: the ball used in this game *soft-bill* \sɒf-bɪl/ *n*: a bird with a weak bill adapted to feeding exp. on insects — compare *HARD-BILL* *soft-boiled* \sɒf-bɔɪld/ *adj* 1 of an egg: boiled to a soft consistency 2: *SENTIMENTAL* *soft-bound* \sɒf-baʊnd/ *adj*: *SOFT-COVER* *soft chancre* *n*: *CHANCROID* *soft coal* *n*: *BITUMINOUS COAL* *soft-cover* \sɒf-kav-ər/ *adj*: bound in flexible covers: not bound in hard covers: *specif*: *PAPERBACK* <~ books> *soft drink* *n*: *SODA POP* *soften* \sɒf-ən/ *vb* *soft-ened*; *soft-en-ing* \sɒf(-ə)-nɪŋ/ *v* 1: to make soft or softer 2 a: to weaken the military resistance or the morale of esp. by harassment (as preliminary bombardment) — often used with *up* b: to impair the strength or resistance of — often used with *up* <~ up a sales prospect> ~ *v*: to become soft or softer — *soft-en-er* \sɒf(-ə)-nər/ *n* *soft-finned* \sɒf(t)-fɪnd/ *adj*: having fins in which the membrane is supported entirely or mostly by soft or articulated rays — used of higher teleost fishes: compare *SPINY-FINNED* *soft goods* *n* *pl*: goods that are not durable — used esp. of textile products *soft hail* *n*: *GRAPPEL* *soft-head* \sɒf-hed/ *n*: a silly or feeble-minded person *soft-headed* \sɒf-hed-əd/ *adj*: having: a weak, unrealistic, or uncritical mind — *soft-headed-ly* *adv* — *soft-headed-ness* *n* *soft-hearted* \sɒf-hɑ:təd/ *adj*: emotionally responsive: *SYMPATHETIC* — *soft-hearted-ly* *adv* — *soft-hearted-ness* *n* *soft-land* \sɒf-land/ *v* [*back-formation* fr. *soft landing*] *v*: to make a soft landing on a celestial body (as the moon) ~ *v*: to cause to *soft-land* — *soft-land-er* *n* *soft palate* *n*: the fold at the back of the hard palate that partially separates the mouth and pharynx *soft-pedal* \sɒf(t)-ped-əl/ *v* 1: to use the soft pedal in playing 2: to play down: *OBSCURE* *MUFFLE* <~ the issue> *soft pedal* *n* 1: a foot pedal on a piano that reduces the volume of sound 2: something that muffles, deadens, or reduces effect *soft rot* *n*: a mushy, watery, or slimy decay of plants or their parts caused by bacteria or fungi *soft scale* *n*: a scale insect more or less active in all stages *soft sell* *n*: the use of suggestion or gentle persuasion in selling rather than aggressive pressure — compare *HARD SELL* *soft-shell* \sɒf(t)-shell/ or *soft-shelled* \sɒf-sheld/ *adj*: having a soft or fragile shell esp. as a result of recent shedding *soft-shell clam* *n*: an elongated clam (*Mya arenaria*) of the east coast of No. America that has a thin friable shell and long siphons and is used esp. for steaming — called also *soft-shelled clam* *steamer* *soft-shelled turtle* *n*: any of numerous aquatic turtles (family Trionychidae) that have sharp claws and mandibles and a flat shell covered with soft leathery skin instead of with horny plates *soft-shoe* \sɒf(t)-ʃu:/ *adj*: of or relating to tap dancing done in soft-soled shoes without metal taps *soft-soled shoes* (without metal taps) *soft-soothe* \sɒf(t)-sɒp/ *v*: to soothe or persuade with flattery or blarney — *soft-soap-er* \sɒf-sɒp-ər/ *n* *soft soap* *n* 1: a semifluid soap 2: *FLATTERY* *soft-spoken* \sɒf-spɔ:kən/ *adj*: having a mild or gentle voice: also: *SCAVE* *soft spot* *n* 1: a sentimental weakness (has a *soft spot* for him) 2: a vulnerable point (a *soft spot* in the defense system) *soft touch* *n*: one who is easily imposed on or taken advantage of *soft-ware* \sɒf-twa(ə)r, (t)weɪ(ə)r/ *n* 1: the entire set of programs, procedures, and related documentation associated with a system and esp. a computer system: *specif*: computer program 2: something used or associated with and usu. contrasted with hardware; esp.: materials for use with audiovisual equipment *soft wheat* *n*: a wheat with soft starchy kernels high in starch but usu. low in gluten *soft-wood* \sɒf-twud/ *n* 1: the wood of a coniferous tree including both soft and hard woods 2: a tree that yields softwood *softwood* *adj* 1: having or made of softwood 2: consisting of immature still pliable tissue <~ cuttings for propagating plants> *soft-wood-ed* \sɒf-twud-əd/ *adj* 1: having soft wood that is easy to work or finish 2: *SOFTWOOD* 1 *softy* or *softie* \sɒf-tē/ *n*, *pl* *softies* [sɒft] 1: an excessive sentimental or susceptible person 2: a weak, effeminate, or foolish person *Sog-dian* \sɒg-dē-ən/ *n* [*L. Sogdiani*, *pl.*, fr. *pl.* of *sogdianus* *adj.* *Sogdian*, fr. *Opers Sughuda Sogdiana*] 1: a native or inhabitant of Sogdiana 2: an Iranian language of the Sogdians — see *INDO-EUROPEAN LANGUAGES* table — *Sogdian* *adj.*

so-ggy \ˈsɒ-ɡi-
: saturated
SOAKED <
cooking <
\ˈsɒ-ɡi-
so-dl-ase
SO-CALLED
so-phie of
care of, fr.
restaurant
ˈsoil \ˈsɔɪl
pigsty, pig
or defile
superficial
reputation
2soil n
: morab
pollutetr
3soil n (M
— more
earth that
: the sup
mantle of
native <
which so
4soil w [fr
enclosure
by feeding
soil-age
being soil
soil bank
with soil
governm
soil-borne
<— fung
soil cons
yields w
soil-less
rure>
soil pipe
soil scler
soil serie
from sim
vegetation
soil-ure \ˈsɔɪl-
soiled 2
soi-ree a
party, fr.
— more
soi-xante
1so-journ
temporal
2sojourn
subdural
at SUB-J
for a mo
soke \ˈsɔk
jurisdic
Saxon an
with the
: jurisdic
included
soke-ma
: a tenu
1sol \ˈsɔl
in a med
diatomic
2sol \ˈsɔl
equal to
3sol \ˈsɔl
— see M
4sol \ˈsɔl
colloidal
5sol abba
Sol \ˈsɔl
sola pl o
1so-lace
solar to
anxiety
2solace
a: to r
syn see
so-la-na
fr. *Sola*
so-lan g
+ 2nd a
: a very
black w
so-la-nin
solanum
C₂H₂N₂
the night
so-la-nu
nightsh
of the
cymose
solar \ˈsɔl-
& ON
sun esp
in relat
reckone
the sun
solar bar
energ